

### **REMARKS**

Favorable reconsideration and allowance of this application are requested.

At the outset, the allowability of claims 95, 112, 128 and 138 is noted appreciatively by the applicants. As will become evident from the following discussion, all claims now pending herein are in condition for allowance and official notice to that effect is solicited.

As a procedural note, the present amendment is being filed concurrently with a formal Request for Continued Examination (RCE) under 37 CFR §1.114. Accordingly withdrawal of the "finality" of the December 12, 2007 Official Action is in order so as to allow entry and consideration of the amendments and remarks presented herewith.

#### **1. Response to 35 USC §112 Rejection**

Claim 100 has been revised so as to be dependent from claim 88. As such, claims 100 and 101 are believed to be in compliance with 35 USC §112, second paragraph. Withdrawal of the rejection advanced under such statutory provision is therefore in order.

#### **2. Response to 35 USC §102(b) Rejection**

The Examiner has persisted in his rejection of claims 88-94, 96-111, 113-127, 129-137 and 139-140 attracted a rejection under 35 USC §102(b) as allegedly being anticipated by WO 99/52973 ("the '973 publication"), using related USP 6,605,344 as the English-language translation thereof. As will become evident from the following discussion, the presently pending claims are patentable over the '973 publication.

Applicants note at the outset that the claims have been amended so as to recite the preamble expression "consisting essentially of" rather than the open ended preamble expression "comprising". Thus, it is now abundantly clear that the present claims *exclude* a polyvinyl alcohol component. Thus, the Examiner's attention is again

directed to the comments on such issue in the applicants' responsive amendment dated September 26, 2007. For this reason alone, the pending claims cannot be anticipated by the '973 publication.

In addition, pending claim 88 has also been amended so as to include subject matter supported by prior claim 97 and page 42, lines 7-26 of the original specification. In this regard, as seen in the Examples of the present specification, the film of the present invention is soluble in a *1 N aqueous hydrochloric acid solution and/or a 1 N aqueous sodium hydroxide solution at room temperature for 24 hours*. In contrast, the gas-barrier film of the '973 publication is *insoluble* in the above solutions under the conditions specified. (see Comparative Example 2). Therefore, the '973 publication cannot possibly anticipate the presently claimed invention defined by claim 88.

Withdrawal of the rejection advanced under 35 USC §102(b) based on the '973 publication is therefore in order.

### **3. Comments Regarding Proper Scope of Claims 95, 112, 128 and 138**

Notwithstanding the applicants' comments on pages 12-13 of the Amendment dated September 26, 2007, the Examiner seems to be under the erroneous belief that claims 95, 112, 128 and 138 are limited to a film formed solely of a poly(carboxylic acid) polymer (A) as he states in section 2 on page 2 of the Official Action dated December 12, 2007 that:

“The only films which would exclude blend components are recited in claims 95, 112, 128 and 138...which require the presence of a film, prior to reaction with (B), formed solely of the polycarboxylic acid) polymer (A).”

Such a statement however evidences a lack of understanding of the scope of such claims. Specifically, as stated already by the applicants in the Amendment dated

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September 26, 2007, claims 95, 112, 128 and 138 are drafted in terms of the manner in which the oxygen permeability properties recited therein are measured.

Hence, measurement of oxygen permeability is accomplished by use of a film formed solely of the poly(carboxylic acid) polymer (A) under dry conditions of a temperature of 30°C and a relative humidity of 0%. This does not mean of course that claims 95, 112, 128 and 138 exclude blend components as erroneously asserted by the Examiner. It does mean however that when one measures oxygen permeability, it must be done through a film formed solely of the poly(carboxylic acid) polymer (A) under the conditions stated.

The comments above are therefore proffered so as to dispel the erroneous view stated in the Official Action dated December 12, 2007 and to thereby ensure that the proper scope of protection may be afforded to such claims.

#### **4. Fee Authorization**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

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